

**CITY OF HAYWARD**  
**AGENDA REPORT**

AGENDA DATE 01/13/04

AGENDA ITEM 6

WORK SESSION ITEM           

**TO:** Mayor and City Council

**FROM:** Director of Community and Economic Development

**SUBJECT:** Adoption of Resolution of Intent to Reimburse Expenditures From the Proceeds of Mortgage Revenue Bonds Financing the Purchase and Rehabilitation of the Lord Tennyson Apartments

**RECOMMENDATION:**

It is recommended that the City Council:

- Adopt the attached resolution conditionally authorizing the issuance of \$14 million in mortgage revenue bonds to assist in the acquisition and rehabilitation of the Lord Tennyson Apartments;
- Authorize the City Manager to execute agreements for bond counsel services with Jones Hall, A Professional Law Corporation, and for financial advisor services with CSG, Inc.;
- Authorize the City Manager to execute all other implementing documents in connection with the proposed issuance.

**DISCUSSION:**

Constructed in 1968, the Lord Tennyson Apartments (2191 West Tennyson Road) is a 253-unit project, containing 24 buildings with stucco exteriors and flat roofs. The buildings contain 196 two-bedroom units, 49 three-bedroom units and 8 four-bedroom units with square footages of 893, 1157, 1357, respectively. Lord Tennyson is owned by Lord Tennyson Apartments, Inc., a nonprofit corporation owned by Volunteers of America National Services (VOA). With over 200 projects nationwide, VOA is one of the nation's largest nonprofit providers of quality, affordable housing for low and moderate income families, people with disabilities and the elderly.

The property has been well managed over time; however, wear-and-tear over the course of more than 30 years necessitates that significant rehabilitation be undertaken. A Capital Needs Assessment commenced in October 2002; that assessment found that the property needed a significant amount of rehabilitation, including replacement of windows, furnaces, roofs, kitchen cabinets, appliances and doors. Playground equipment, sidewalk replacement and a resurfaced parking lot are other items that the rehabilitation would seek to address. This portion of the

rehabilitation, including construction contingency and general contractor overhead, would be approximately \$4.7 million for this work.

In addition to the work described above, VOA has agreed to update the buildings' electrical systems, converting the units to individual metering of electricity and gas. This is estimated to cost approximately \$1 million and will require additional service, code and safety upgrades of approximately \$1.8 million, for a total of \$2.8 million. The total rehabilitation cost for this project will be approximately \$7.5 million or \$30,800 per unit.

Volunteers of America is requesting that the City issue approximately \$14 million in tax exempt multifamily mortgage revenue bonds for the acquisition and rehabilitation of the Lord Tennyson Apartments. In addition, VOA is putting at least \$2 million of cash equity into the project for a total project cost of approximately \$16 million. As described above, approximately 53.5% of the bond issue will cover the cost of the rehabilitation. Approximately \$1.5 million will be set aside as long term replacement reserves for the project; bond issuance, credit enhancement, construction contingency and other related costs are approximately \$2 million. The remaining \$5 million dollars represents approximately 10% of VOA's equity in the project. These funds will be used by VOA to carry out its ongoing mission of creating new affordable housing for very low income households. VOA uses the equity in its assets as resources to create new housing, just as the owner of a single family home utilizes a portion of his equity by taking out a home improvement loan.

#### **Tenant Rent Increase**

The property was originally financed and is operated under a U.S. Department of Housing and Urban Development (HUD) Section 221(d)(3) BMIR ('Below Market Interest Rate') loan that was originated in 1968. A condition of this loan was that 60% of the units be leased by tenants with incomes below 50% of the area median income and the other 40% of the units be leased to tenants with incomes below 80% of area median income. The BMIR mortgage and the accompanying rent restrictions will expire on December 1, 2008.

Because of currently favorable interest rates and the building's need for rehabilitation, VOA would like to refinance the project now. VOA has received permission from HUD to pay off it's existing BMIR mortgage in exchange for recording a use agreement with HUD incorporating the current rental restrictions. The use agreement's main purpose is to preserve the Lord Tennyson Apartments as affordable to tenants with incomes at or below 60% AMGI until December 1, 2008, when the HUD restrictions would expire. In addition, the use agreement will provide protection against displacement for all of the current tenants.

Current Lord Tennyson rents are affordable to households at approximately 36% of area median income adjusted for household size (AMGI). To fund the rehabilitation, Volunteers of America proposes to increase in the current rents from:

- \$627 to \$829 for the 2BR;
- \$735 to \$958 for a 3BR; and
- \$848 to \$1068 for a 4BR.

The higher rent levels are affordable to tenant households at approximately 50% of AMGI, adjusted for household size, who are spending 30% of their monthly income for housing costs. The new use agreement with HUD provides VOA with "enhanced" Section 8 vouchers for any residents who would otherwise be forced to pay more than 30% of their income on rent. Key restrictions of the enhanced vouchers are as follows:

- (a) the vouchers are not tied to the units; and
- (b) only tenants at the time of the refinancing are eligible for vouchers. Prospective tenants who apply for occupancy after the rent increase are not eligible

### **Ownership**

Tax exempt mortgage revenue bonds are often used by nonprofit organizations as a way of financing substantial property rehabilitation. In order to issue the bonds, a change of ownership is required for the 15-year federal tax credit compliance period. Therefore, the ownership of Lord Tennyson will be transferred from Lord Tennyson Apartments, Inc. to a limited partnership with a Volunteers of America entity as the sole General Partner.

### **Benefits to the City from Issuing Bonds for this Project**

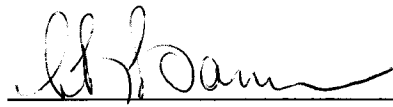
As Council is aware, payment of the bond principal and interest is solely from the project revenues and is not an obligation of the City of Hayward. Nor is the City providing any additional financing for this project.

If the City issues tax exempt bonds for the acquisition and rehabilitation of the development, VOA will:

- extend the affordability restrictions from the current 15 years to 55 years from the date when the tax exempt bond are issued;
- at least 30% of the units will be restricted to tenants whose household income is at or below 50% of AMGI. Occupancy of the other units will be restricted to households whose income is at or below 60% of AMGI, adjusted for household size;
- complete significant interior and exterior property rehabilitation;
- upgrade the buildings' electrical systems and complete an additional \$1.8 million in service, code and safety upgrades;
- continue to own the development, maintaining the current quality of property management services.

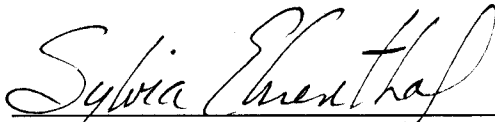
The City will have the primary Regulatory Agreement on this development, restricting occupancy and rents for 55 years. The property will be monitored at least once each year and all tenants will be income certified on an annual basis. The City will receive \$17,500 each year for monitoring the project. Staff recommends adoption of the attached resolution in order to rehabilitate and preserve these 253 units of affordable housing for an additional 55 years.

Prepared by:



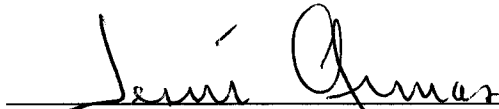
Ann R. Bauman  
Neighborhood and Economic Development Manager

Recommended by:



Sylvia Ehrenthal, Director of Community  
and Economic Development

Approved by:



Jesús Armas, City Manager

Resolution

# DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

*mal*  
1/8/04

## A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD DECLARING INTENTION TO REIMBURSE EXPENDITURES FROM THE PROCEEDS OF TAX-EXEMPT OBLIGATIONS AND DIRECTING CERTAIN ACTIONS

WHEREAS, the City of Hayward (the "City") intends to issue tax-exempt obligations (the "Obligations") for the purpose, among other things, of making a loan to a California limited partnership to be formed by Volunteers of America National Services (the "Developer"), the proceeds of which shall be used by the Developer to finance the acquisition, rehabilitation and development of a multifamily housing facility located at 2191 West Tennyson Road in the City of Hayward, California and commonly known as the Lord Tennyson Apartments (the "Project"); and

WHEREAS, the City is authorized by Chapter 7 of Part 5 of Division 31 of the Health and Safety Code of the State of California (the "Law") to issue and sell revenue bonds for the purpose of financing the acquisition, rehabilitation and development of multifamily rental housing facilities to be occupied in part by low and very low income tenants; and

WHEREAS, United States Income Tax Regulations section 1.103-18 provides generally that proceeds of tax-exempt debt are not deemed to be expended when such proceeds are used for reimbursement of expenditures made prior to the date of issuance of such debt unless certain procedures are followed, among which is a requirement that (with certain exceptions), prior to the payment of any such expenditure, the issuer must declare an intention to reimburse such expenditure (the "Tax Law Reimbursement Provisions"); and

WHEREAS, the Obligations will be considered to be "qualified exempt facility bonds" under Section 142(a) of the Internal Revenue Code of 1986, as amended (the "Code"), and Section 147(f) of the Code requires that the "applicable elected representative" with respect to the City hold a public hearing on and approve the issuance of the Obligations; and

WHEREAS, this City Council is the elected legislative body of the City; and

WHEREAS, a notice of public hearing in a newspaper of general circulation in the City has been published, to the effect that a public hearing would be held by this City Council regarding the issuance of the Obligations by the City and the nature and location of the Project; and

WHEREAS, this City Council held said public hearing on such date, at which time an opportunity was provided to present arguments both for and against the issuance of such Bonds and the nature and location of the Project; and

WHEREAS, it is in the public interest and for the public benefit that the City declare its official intent to reimburse the expenditures referenced herein;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward DECLARES and ORDERS as follows:

1. The City intends to issue the Obligations for the purpose of paying the costs of financing the acquisition, rehabilitation and development of the Project.
2. The City hereby declares that it reasonably expects that a portion of the proceeds of the Obligations will be used for reimbursement of expenditures for the acquisition, rehabilitation and development of the Project that are paid before the date of initial execution and delivery of the Obligations.
3. The maximum amount of proceeds of the Obligations to be used for reimbursement of expenditures for the acquisition, rehabilitation and development of the Project that are paid before the date of initial execution and delivery of the Obligations is \$10,000,000.
4. The foregoing declaration is consistent with the budgetary and financial circumstances of the City in that there are no funds (other than proceeds of the Obligations) that are reasonably expected to be (i) reserved, (ii) allocated or (iii) otherwise set aside, on a long-term basis, by or on behalf of the City, or any public entity controlled by the City, for the expenditures for the acquisition, rehabilitation and development of the Project that are expected to be reimbursed from the proceeds of the Obligations.
5. The Developer shall be responsible for the payment of all present and future costs in connection with the issuance of the Obligations, including, but not limited to, any fees and expenses incurred by the City in anticipation of the issuance of the Obligations, the City's financing fee with respect to the issuance of the Obligations, the City's annual administration fee with respect to administering the provisions of a regulatory agreement with respect to the Project, the cost of printing any official statement, rating agency costs, bond counsel fees and expenses, underwriting discount and costs, trustee fees and expense, and the costs of printing the Obligations. The payment of the principal, redemption premium, if any, and purchase price of and interest on the Obligations shall be solely the responsibility of the Developer. The Obligations shall not constitute a debt or obligation of the City.
6. This City Council hereby further determines that it is appropriate for the City to issue the Obligations to finance the acquisition, rehabilitation and development of the Project.

7. The law firm of Jones Hall, A Professional Law Corporation, is hereby named as bond counsel to the City in connection with the issuance of the Obligations. The financial advisory firm of CGS Advisors, Inc. is hereby named as financial advisor to the City in connection with the issuance of the Obligations. The fees and expenses of bond counsel and the financial advisor are to be paid solely from the proceeds of the Obligations or directly by the Developer.

8. The City Manager is hereby authorized, for and in the name of and on behalf of the City, to make an application to the California Debt Limit Allocation Committee for an allocation of private activity bonds for the financing of the Project and to execute contracts with bond counsel and the financial advisor in substantially the forms on file with the City Clerk with such changes or deletions as shall be deemed necessary by such officials or staff and to negotiate and execute any and all other documents necessary to complete this transaction.

9. The adoption of this Resolution is solely for the purpose of meeting the requirements of the Code and shall not obligate the City, without further formal action to be taken by this City Council, to (i) provide financing to the Developer for the acquisition, rehabilitation and development of the Project or to issue the Obligations for purposes of such financing; or (ii) approve any application or request for, or take any other action in connection with, any environmental, General Plan, zoning or any other permit or other action necessary for the acquisition, rehabilitation, development or operation of the Project.

IN COUNCIL, HAYWARD, CALIFORNIA, January 13, 2004

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:  
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward